

BEFORE THE ADMINISTRATOR

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Docket No. TSCA-07-2003-0310

Respondent

The Complaint proposed a civil penalty of two thousand seven hundred and fifty dollars (\$2750) for these violations. Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and fully and finally resolves the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, and admits the factual allegations of the Complaint.

2. Respondent waives its right to contest the allegations of the Complaint and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of one thousand five hundred and forty dollars (\$1540), to be paid in four equal payments of three hundred and eighty-five dollars (\$385) each. The first payment shall be due within forty-five (45) days of the effective date of this Order. The second payment shall be due on May 1, 2004. The third payment shall be due on August 1, 2004. The fourth payment shall be due on November 1, 2004. Respondent understands that failure to submit any of the required payments by the respective due date shall result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

6. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated

interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of one thousand five hundred and forty dollars (\$1540) in accordance with the payment schedule contained in Paragraph 5 of the Consent Agreement above. Such payments shall identify the Respondent by name and docket number and shall be by certified or cashier's checks made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

2. A copy of each check shall simultaneously be sent to the following:

Regional Hearing Clerk
EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

and

Mike Gieryic
Attorney
EPA Region 7
901 N. 5th Street
Kansas City, Kansas 66101

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
BEACH REALTY, L.L.C., d/b/a COLDWELL
BANKER OZARK REALTY

Date: 1/5/04 By: [Signature]
Name: DENNIS NEWBERRY
Title: BROKER

COMPLAINANT
ENVIRONMENTAL PROTECTION AGENCY

Date: January 13, 2004 By: [Signature]
Lynn Slugantz, Acting Chief
Radiation, Asbestos, Lead and Indoor
Programs Branch

Date: January 12, 2004 By: [Signature]
Mike Gieryic, Attorney
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: January 12, 2004 [Signature]
ROBERT L. PATRICK
Regional Judicial Officer
EPA, Region 7

IN THE MATTER OF Beach Realty LLC, d/b/a Coldwell Banker Ozark Realty, Respondent
Docket No. TSCA-07-2003-0310

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dennis Newberry
Coldwell Banker
Ozark Realty
4265 Highway 54
Osage Beach, Missouri 65065

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 1/12/04


Kathy Robinson
Regional Hearing Clerk